

R E M A R K S

Claims 1-12 are pending and at issue.

The undersigned wishes to thank Examiner Rachuba for the courtesies extended during the above-referenced telephone interview initiated by the undersigned to discuss Applicant's arguments made in Amendment "A" filed on July 26, 2007 arguing that the withdrawal of claims 9-12 was improper and that the claims should be examined. The undersigned noted that the claims were maintained as withdrawn in the current Office Action and that the arguments presented extending from the last paragraph of page 5 through the last paragraph of page 6 of Amendment "A" were not addressed in the current Office Action. Examiner Rachuba indicated that she would review this, but that in any event we should provide this response so as to not incur any additional time penalties. While it was not discussed during the above-referenced telephone interview, the undersigned wishes to note that Applicant's argument regarding proposed modification of Kingman with Hays on page 5, paragraph 3 of Amendment "A" was also not addressed in the current Office Action. Rather, the current Office Action appears to address an argument made in one of Applicant's prior responses. In view of the foregoing, a new Office Action is respectfully requested addressing the above-referenced arguments from Amendment "A" so that the Applicant can understand the Examiner's positions in this regard and make a better determination on how to proceed with the prosecution of the application.

In order to make this response complete, the rejection of claims 1, 2, 5 and 6 as unpatentable over Kingman 2,386,900 in view of Meyer 5,429,545 is respectfully traversed on the grounds that it is based upon an improper modification of Kingman with Meyer.

More specifically, the rejection asserts that “it would have been obvious to one skilled in the art to substitute one material for the other to achieve the predictable result of a hand held tool that conforms to the shape of the workpiece.” (emphasis added) However, this benefit is already expressly achieved by the structure in Kingman (see Kingman, column 1, lines 8-24) and no rationale is provided as to why the proposed modification would provide a superior result with respect to conforming to the shape of the workpiece than what is already expressly achieved by Kingman. Indeed, because the proposed modification would remove the rigid understructure of Kingman, the desired “efficient scraping and scouring action” (Kingman, column 3, lines 54-55) would not be achieved or would be greatly hindered or would require that a user’s hands or other structure be provided for a rigid backing. Such results are not beneficial. Furthermore, references cannot be combined where references teach away from their combination (see MPEP §2145 X.2). In this case, Kingman expressly states that it’s object is to provide a scouring device having “a substantially rigid body or core” (Kingman, column 1, lines 8-11) and consistent with this object, repeatedly teaches that it’s scouring device should have a rigid body or block (see, for example, column 1, lines 41-46 and the first line of each of claims 1-5). Accordingly, for this additional reason alone, the proposed rejection is improper and should be withdrawn.

The rejection of claims 3, 4, 7 and 8 as unpatentable over Kingman in view of Meyer as applied to claim 1, and further in view of Hays 2,553,254 is respectfully traversed for the reasons above and for the reasons stated in Applicant’s Amendment “A” filed on July 26, 2007, page 5, paragraph 3, which are incorporated herein by reference.

In view of the foregoing, Applicant respectfully requests reconsideration of the withdrawal of claims 9-12 and the rejection of claims 1-8, as well as an action on the merits for claims 9-12.

Respectfully submitted,

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